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ABSTRACT

The implications of the mandatory collective bargaining law in Oregon, House Bill 2263, are described in a case history of Lane Community College. In addition, problems that have emerged as a result of collective bargaining in Oregon are listed. (DB)

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COLLECTIVE BARGAINING - OREGON STYLE

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Oregon frequently develops its own unique way to handle the affairs of its residents. The past session of the state legislature is no exception to this direction. Collective bargaining has been happening in Oregon for many years, however this had not penetrated into the public sector in any magnitude. Most of the local schools and colleges operated on an employe group discussing salaries and working conditions with the Board. It could be debated how effective this was.

During the 1973 session of the House of Representatives, a collective bargaining bill was introduced, primarily sponsored by the unions, which had a very dramatic effect on the total public sector, i.e. cities, park districts, public schools, and community colleges. This house bill in effect amended twelve state statutes and repealed twenty-seven others. The primary impact of this bill did the following things:

1. made collective bargaining mandatory for public employers and public employes,

2. made provisions to exempt certain elected officials, confidential employes and supervisory employes,

3. established very specific procedures for conducting bargaining,

4. provided certification of labor organizations as exclusive representatives of public employe groups,

5. eliminated previous prohibition of public employe strikes (except for police, fire and certain state hospital institutions),

6. made provisions for binding arbirtation, and

7. set the scene for many future court cases to interpret the exact intent of this house bill.

Oregon has in existence a Public Employe Relations Board. It is through this Board that implementation of the collective bargaining bill is accomplished. The Board itself is empowered to rule on procedures and has at its disposal many other powers, such as conducting hearings, appointing fact-finding groups, determining the composition of the bargaining unit, conducting elections for determining bargaining units, and providing means for binding arbitration to take place. One of the weaknesses of PERB is that additional staff was not provided to cope with the considerable increase in requests for its services as mandated by law.

During the 1973 legislative session much effort was directed by school board associations and administrative groups to stop this bill from going through, or to modify the bill to become more flexible and permissive. These efforts were only minimal in success. The bill itself was approved during the last portion of the session in June; it was to become effective in October

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of 1973. As late as September of 1973 a statewide effort was made by the Oregon School Boards Association to circulate a referendum petition to have this bill referred to the people for approval or rejection at the primary election in May, 1974. This effort failed. Later in the summer of 1973 all community colleges were well aware that plans should be made to work with the provisions of collective bargaining.

The bill itself has many implications for the operation of each individual college. The matter of establishing who is supervisory is an important interpretation for PERB. If the current job description includes supervision and implementation of any of the items that may appear in a contract with the union, the department chairman should therefore be classified as "supervisory". However, if department chairmen are declared to be members of the bargaining unit, it is evident that the job description needs to be changed.

Another immediate and noticeable effect is involved with the unfair labor practice provisions which in essence prohibit many of the discussions between administration and other members of the staff. Careful attention has to be directed regarding the nature of discussions, so as not to become involved with any matter that may be "negotiated".

To help understand the implications of the now mandatory collective bargaining law, the following case history of Lane Community College may be helpful.

Upon receipt of House Bill 2263, both staff and administration after reading the bill several times were convinced that many portions of it were unclear and could be interpreted in different ways. In July of 1973 the administration requested the college legal counsel to respond to specific questions in an attempt to follow the intent of this piece of legislation. Even with legal counsel there were many areas that undoubtedly will be processed through the courts for a clear interpretation. There were at that time two specific areas of concern, and these areas are still of concern. They are (1) the composition of the bargaining unit, i.e. which staff members are confidential or supervisory, and (2) what items are considered "negotiable".

Lane has had in existence a Staff Personnel Policies Committee. This committee was composed of elected representatives from the total staff. One from administration, four instructional staff (two from college transfer, two from occupational), and two classified. This was a committee that was part of the Staff Association and was established specifically for negotiating working conditions and salaries.

During the summer of 1973 a change in the Staff Association constitution was accomplished so that it would conform to the provisions in the collective bargaining bill, primarily that of removing administrative representation. The College administration endeavored to stimulate the Staff Association to become active in taking a leadership role so that continuation of staff representation could be internal rather than an external union group being formed. The administration, however, had a major constraint in that it is a unfair labor practice to "dominate, interfere with, or assist in the formation, existence, or administration of any employe organization".

An additional outside occurrence contributed to the direction that Lane was to take. Although impossible to document, it became evident that Lane was singled out to be a "lighthouse" district or a pacesetter for the state of

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Oregon in receiving maximum attention from the unions. This perhaps caused the internal Staff Association to become less active, in fact, almost a "hands off" position which allowed the unions to import leadership in the forthcoming elections. It was the unions that moved early in soliciting staff support and circulating petitions to be submitted to PERB requesting an election in the matter of determining which group would represent the staff. The Staff Association which had been representing all employees since the College began literally dissolved.

Communications during the summer period are normally minimal. It wasn't until the staff returned early in September that activity again increased. Memorandums from the Staff Association president were very neutral and an increased number of memorandums were circulated by the American Federation of Teachers (AFT) and the Oregon Education Association/National Education Association (OEA/NEA) groups. Two formal petitions were submitted on the first of November, 1973, one by the AFT and one by the OEA/NEA requesting a representation election to be conducted by PERB.

Due to the provisions of the collective bargaining bill, PERB could not conduct an election until the matter of who was eligible to belong to the bargaining unit was determined. This determination involved identifying the confidential personnel, supervisory personnel, and other part-time employes. The College administration had submitted a list of 78 exclusions (confidential and supervisory) and also stipulated that only those individuals on Board contract working half-time or more would be eligible to join. Both union groups indicated on their petition between 12 and 20 exclusions would be acceptable. The stage was then set for a lengthy series of hearings conducted by a PERB hearings officer before such an election could be held. It was obvious by both union groups and the administration that several months could be consumed before an election would be held.

The Board of Education, for the past two years, had been through many bargaining sessions with representatives of the Staff Association bargaining directly with the seven Board members. This put the Board in an untenable position. In November of 1973 the Board employed a professional negotiator and appointed a three-member team from the College administrative group to represent the Board's interest.

This of course prompted the reaction from the staff, that, "If you hire a professional negotiator, we also need to hire professional use of the labor groups".

In order to try to resolve the issue as soon as possible, the administration met with the two labor groups and mutually agreed to have a "consent election" with PERB supervising before the issue of who would be a member of the bargaining unit was resolved. Another matter that needed to be resolved as part of the collective bargaining bill, was determining whether one bargaining unit would represent all staff, or whether it should be two bargaining units, i.e. faculty, and classified. A PERB hearings officer conducted a hearing on this matter in December of 1973 and finally rendered a decision in January that it would be proper for two bargaining units to be established at Lane. Working as quickly as the procedures allowed, an election was finally set for February 20, 1974. This in essence was two elections, one for the faculty group to ballot on three items: (1) no representation (a very poorly worded ballot title because provisions of the law would allow the in-house

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organization to continue), (2) AFT, and (3) OEA/NEA. The second part of the election was for classified to vote on two issues: (1) no representation (see above), and (2) AFT.

The results of these elections produced the AFT to be the bargaining unit for the classified, and no decision for the faculty. The reason for no decision was that one of the three items on the ballot had to have a majority of over 50% of the votes. The administration challenged 26 of the ballots on the basis of individuals performing supervisory duties. In order for the OEA to win, at least 21 of the 26 would have to be cast for the OEA; and the AFT was 27 short of a majority and could not have achieved a victory. It was then up to PERB to conduct a hearing to determine which, if any, of the challenged ballots should be counted.

PERB's short-handed staff would inevitably drag out a decision and a hearing until well into late spring. In order to attempt to resolve a bargaining unit for the faculty, a second consent election was agreed to, and since the number of ballots cast for "no representation" was about 10%, it was evident that a consent election would be on the matter of OEA or AFT. This election was held on March 29, 1974. At this election, with over 85% of the faculty voting, the OEA received about 40% to the AFT's 31%. The administration challenged 68 ballots, or approximately 28%. About one-third of the 28% were people voting that were not on Board contract, who were working primarily part-time, or in a teacher's aide position. This election again was placed in the hands of PERB to be resolved.

On April 22 a meeting was conducted by the PERB hearings officer, and through a caucus with the legal counsels of AFT and OEA along with the Board's negotiator, the issue was settled by consenting to allow to be counted 53 of the 68 ballots. OEA was declared the winner of this election, however, the right of the administration was still held to have PERB determine the question of who is supervisory and eligible to join the bargaining unit.

Two negotiating teams were selected by their representative unions, the AFT and OEA/NEA. These teams scheduled meetings with the Board/Administrative team. The AFT got underway early in March although the hard bargaining did not begin until summer. The issue of who was eligible to belong to the union and who was excluded was resolved by mutual agreement between the administration and the AFT, however the faculty representation is more difficult to resolve. One of the key positions is that of department chairmen. If the department chairmen are declared to be members of the bargaining unit, the job description which now exists will have to be rewritten to remove the responsibility and authority of department chairmen in determining employment and other job assignments which will be part of the contract.

With the emergence of negotiating meetings, a session with the Board and the Board/Administrative negotiating team set the general parameters of what would be considered appropriate in agreeing to the various parts of the proposed contract. The Board exhibited a reluctance to extend any authority to the negotiating team, however it realized the importance of not being directly involved at the negotiating table.

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The progress of classified negotiations with the AFT proceeded with relatively little conflict. The progress of the faculty negotiations with the OEA/NEA is more involved and brought out at the start a disagreement on which items are negotiable and which are not. This is true at the state level and court cases are now pending on this very matter. It is too early at this point to determine how long the process will continue, however we will consider it a miracle if bargaining is completed before the start of fall term. A PERB hearing is scheduled for late in August to determine the composition of the bargaining unit for the faculty group.

Over the past year these are the significant implications which have emerged from collective bargaining - Oregon Style:

1. a definite restriction in the communications and the nature of communications between staff groups, and especially between the administration and the staff,

2. many attempts to discredit the administration in its operating procedures,

3. the emergence of hard line bargaining when it was realized that you can't be a "good fellow" and turn over the operation of the College to committees,

4. increased difficulty in developing the yearly budget,

5. increased difficulty in proposing new changes to Board Policy, and

6. a slowing down of any proposed organizational modifications or changes.

Somewhere in the literature I've read that collective bargaining would tend to improve education. I've yet to see the improvement or the benefits to students. I wonder who negotiates for students?

In closing let me say that I believe that Boards of Education must exert leadership by participating actively in making the case for citizen participation in the determination of the future of their institution. It may be old fashioned and inappropriate to state it here - but I sincerely believe that the locally elected or appointed Board of Education should maintain control of the destiny of the college. They should negotiate in good faith but ultimate responsibility and accountability to the public stockholders should rest in the hands of the Board. If this is to occur - they must be active in moulding legislation which you can live with.

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